

# Threshold Determination: California Case Law

*Center for Biological Diversity v. County of San Bernardino* (Super. Ct. San Bernardino County, filed Apr. 11, 2007, No. CIV SS 0700293).

- The California AG filed suit against the County of San Bernardino alleging that the Environmental Impact Report (“EIR”) prepared for the County’s General Plan failed to comply with the requirements of CEQA.
- The AG specifically alleged that the General Plan Update would
  - aggravate climate change by increasing vehicle miles traveled,
  - increase consumption of fossil fuel-based energy,
  - develop forested and vegetated land that currently sequesters carbon,
  - failed to compare the increase in GHG reasonably expected to result from implementation of the General Plan update and the reductions in GHG mandated by AB 32.
- The parties settled the case agreeing that the County would:
  - add a policy of GHG reduction and call for adoption of a GHG Emissions Reduction Plan,
  - include an inventory of all known, or reasonably discoverable, sources of GHG in the County
  - provide an estimate of the quantity of emissions associated with those sources (the measurements will be estimates, but the estimates will be supported by substantial evidence and will represent the County’s best efforts),
  - inventory emissions for 1990 and the current year and will project emissions for 2020,
  - set a target for the reducing GHG emissions reasonably attributable to the County’s discretionary land use decisions and adopt feasible reduction measures to target.

# Mitigation

The AG recognized the following as feasible mitigation measures in the *San Bernardino Case*:

- High-density developments that reduce vehicle trips and utilize public transit.
- Parking spaces for high-occupancy vehicles and car-share programs
- Electric vehicle charging facilities and conveniently located alternative fueling stations.
- Limits on parking.
- Transportation impact fees on developments to fund public transit service.
- Regional transportation centers where various types of public transportation meet.
- Energy efficient design for buildings, appliances, lighting and office equipment.
- Solar panels, water reuse systems and on-site renewable energy production.
- Methane recovery in landfills and wastewater treatment plants to generate electricity.
- Carbon emissions credit purchases that fund alternative energy projects.

# Conoco/Philips Refinery Settlement

County of Contra Costa approved an EIR for a proposed project called the “Clean Fuels Expansion Project” at Conoco/Phillips’ refinery in Rodeo, California. The AG challenged the EIR administratively, based on an alleged failure to adequately address the project’s anticipated GHG emissions and the impact of those emissions on global warming. Before the matter could get to court, the parties settled the dispute with an agreement committing the County and Conoco to undertake a number of significant mitigation actions, including:

- an energy efficiency audit at the refinery, identifying GHG reduction opportunities at all of its California refineries
- surrender a permit for its Santa Maria coke purification plant
- Conduct a GHG emissions audit of all of the company’s California facilities,
- Pay \$7 million to a carbon offset fund created by the San Francisco Bay Area Air Quality Management District, \$2.8 million for reforestation and/or forest conservation projects; and \$200,000 for the restoration of local wetlands

# Port of LA Settlement

- POLA agreed to the following mitigation:
  - Conduct a port-wide annual inventory of GHG emissions until regulations governing GHG emissions inventories applicable to the Port or Port facilities are promulgated. This GHG inventory geographic boundary for all trucks, trains, and ships encompasses point of origin/destination
  - Move forward with Solar Power Project to reduce GHG emissions at the port
  - Implement Alternative Marine Power
  - Implement Vessel Speed Reduction Program
  - Make Truck Idling reduction
  - Use New Vessel Design that incorporates pollution control
  - Use of Green Building Materials
  - Reduce commuter vehicle mileage for employee commuting

# Great Valley Ethanol

- GVE implement following mitigation measures to reduce GHG
  - Pay \$1,000,000 as a mitigation fee for the Project's greenhouse gas emissions to a fund established and administered by the San Joaquin Valley Air Pollution Control District. This can be reduced by \$25 for each real, permanent, and verifiable metric ton of GHG emissions reductions that GVE achieves by implementing the following measures
    - a. Carbon dioxide capture and marketing;
    - b. Alternative product transportation options;
    - c. Alternative onsite fuels measures, such as use of dairy digester gas;
    - d. Onsite renewable energy projects, such as installation of solar or thermal onsite;
    - e. Onsite ethanol production using cellulosic technology;
    - f. Mitigation measures aimed at reducing greenhouse gas emissions, as set forth at Addendum to the Project EIR;
    - g. Additional measures to be determined with oversight by SJVAPCD.

# San Diego Airport Authority

- AG Settlement agreement recognized no clear threshold policy written but that San Diego International Airport Auth. required to address environmental impacts, including GHG emissions and mitigate.
  - Implement following Specific Measures to Control GHG:
    - Reduce Aircraft on-the-ground energy usage, including landside power and preconditioned air at all new gates, cargo facilities and hangars, retrofit existing gates with landside power
    - Inventory GHG emissions attributable to aircraft movement
    - Reduce Landside Energy usage by replacing shuttles and existing tow vehicles with electric or alternative fuel
    - Use green materials and sustainable design, specifically use of cool roofs (or solar panels) on new buildings and cool pavement on new pavement, construct all new facilities to meet LEED certification with target of silver or better, use construction equipment running on alternative fuels,
    - Coordinate and encourage tenants to address GHG through aggressive recycling program, sale of unleaded Mogas, and reduction of Carbon Footprint